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H –103

International Court of Justice

H0103 – 0001

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Official transcript of the International Military Tribunal in the matter of The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany on 6 April 1946, 1000-1300, Lord Justice Lawrence presiding.

WILHELM KEITEL --- resumed.

CROSS EXAMINATION --- continued.

BY GENERAL RUDENKO:

Q. I am asking you in regard to the order concerning so-called Communistic partisan movements in the occupied territories. Yesterday your counsel showed you this order. This order is dated 16 September 1941, R-98. I remind you of one phrase out of this order. It said in it that discontent should be suppressed and in order to do it, it is necessary to take immediatel cruel measures in order to safeguard the authority of theoccupational powers and to prevent further dissemination of Communistic movement; and furthermore, one has to keep in mind that human life in countries affected absolutely does not cost anything and that intimidating action is possible only by means of applying extraordinary cruelty. You remember this basic idea of the order, that human life absolutely doesn't cost anything. Do you remember this sentence?

A. Yes.

Q. You signed this order with this statement?

A. Yes.

Q. Do you consider that this order was called for by necessity?

A. The background of this order has been explained by me yesterday and I have drawn your attention to the fact that his directive or order was predominantly directed to the supreme commander in the southeast and his departments. This is the Balkans I am referring to. Considerable partisan activities and bandit warfare was taking place and was assuming incredible proportions; and secondly, similar observations had been made in certain limited parts of the occupied Soviet territory. They had been observed

H0103 – 0003

there, too.

Q. It means that you consider that this order was quite correct and apt?

A. My basic views regarding all orders which were made with reference to the treatment of the civilian population have been explained to you. I have signed that order and within my official jurisdiction I am assuming the responsibility.

THE PRESIDENT: The Tribunal considers that you are not answering the question. The question was perfectly capable of an answer yes or no and an explanation afterwards. It is not an answer to the question to say that you have already explained to your counsel.

BY GENERAL RUDENKO:

Q. Once again I ask you, do you consider this order -- and I mean to emphasize this particular order -- in which it is stated that human life absolutely does not cost anything, do you consider this order right?

A. It doesn't contain these words but the fact that in some eastern territory and in certain parts of the Soviet territory human lives were not respected. That was the effect which I had know during the previous years.

Q You said that these words are not in the order.

A As far as I know it does not say absolutely. It merely says that human lives were not worth very much in those territories. That is the way I can recollect it.

Q Now you remember you were interrogated by General Alexandrov on the 9th of November, 1945, and to a question in regard to the essence of this sentence you made this reply:

"This sentence I must admit is a true sentence but the Fuehrer personally himself included this sentence."

Do you remember this explanation you made?

A That is correct, that does apply, that is perfectly correct.

Q I can submit this order to you. I did not present it to you because yesterday you looked at it.

A I did not read it all yesterday. I merely recognized the fact that it existed.

THE PRESIDENT: It would help the Tribunal if you got a translation of the document. When you are cross-examining upon a document and as to the actual words of it, it is very inconvenient for us not to have the document before us.

GENERAL RUDENKO: Now, Mr. President, I shall submit this order to the defendant.

(witness handed document)

THE PRESIDENT: Is it 389-PS?

GENERAL RUDENKO: Yes, this is document 389-PS.

THE PRESIDENT: When you are citing a document it would be a good thing if you would cite the number rather slowly because very often the translation does not come through accurately to us.

GENERAL RUDENKO: I understand, all right, Mr. President. I named it R-98 but it really has a double number, R-98 and 389-PS. I cited paragraph (b) of this order.

BY GENERAL RUDENKO:

Q Defendant Keitel, you have familiarized yourself with this?

A The wording in the German language says that in the countries affected by this human life quite often had no value.

Q And further?

A And further it says that there should be the effect of frightening off which can be achieved by being extremely hard as the price for the life of a German soldier.

Q Yes, it is clear now. And in the same order in paragraph (b) there is also stated that as redemption for the life of a German soldier there should be the execution of fifty to one hundred Communists. The method of execution should increase the effect of intimidation. Is that correct?

A The German text is slightly different from that. It says:

"In such cases, generally speaking, the death sentence must be passed for fifty to one hundred people."

That is the German wording.

Q For one German soldier?

A Yes. I know that and I have seen this.

Q That is what I am asking you about. Once again I ask you--

A Do you want me to make a statement on that or should I not say any more?

Q I shall ask you in regard to this matter.

I ask you whether when signing this order you expressed in this manner your own opinion as to these cruel measures, that is you had agreed with Hitler?

A I did sign the order, yes, but the figures which are contained therein represent alterations which had been made in that order, personal alterations by Hitler.

Q And what figures did you present to Hitler?

A Five to ten. That was the figure which was contained in the original.

Q And so in other words, the divergence between you and Hitler was only as to figures but not as to the fact or the essence thereof?

A The only way a stimulating effect could be imparted to the order would be if the death of several victims was demanded.

THE PRESIDENT: That was not an answer to the question. The question was whether the only difference between you and Hitler on this docu-

H0103 – 0006

ment was a question of figures. That admits of the answer yes or no. Was the only difference between you and Hitler a question of figures?

THE WITNESS: In that case I must say that with reference to the basic thoughts there was a difference of opinion which, however, in its final effect does not have to be justified by me since I merely signed the document on behalf of my department. There was a basic difference regarding that entire question.

BY GENERAL RUDENKO:

Q. All right, we shall go on further.

I would also like to remind you about one more order, that is the order dated the 16th of December, 1942, referring to the so-called struggle against partisan bands. This document was submitted to the Tribunal as Exhibit USSR-16 I shall not examine you in detail in regard to this order. This order was presented to you yesterday by your defense counsel.

A. I have no recollection of that, general, I am afraid. I do not remember that it was shown to me yesterday, I mean.

Q. All right, if you do not remember I can present it to you in order to refresh your memory.

GENERAL RUDENKO: This document was submitted by the Soviet Prosecution as USSR 16.

THE PRESIDENT: I just took down that it was USA 516 but I suppose I was wrong in hearing. It is USSR 16, is it?

GENERAL RUDENKO: Yes, USSR 16.

THE PRESIDENT: Very well.

(Witness handed document)

BY GENERAL RUDENKO:

Q. I shall ask you, defendant Keitel, only one question in regard to this order. In paragraph one of this order it is stated -- pleas pay attentio to the following sentence:

"The troops therefore have a right and they are obligated to take any measures in this struggle without any restriction and also against women and children if it is condusive to success."

Do you find that place?

A. Yes.

Q. Do you find that the order calls for using any kind of measures without any restriction against women and children?

A. All means can be employed without any restriction upon women and children, if necessary.

Q. That is exactly what I am asking you about.

I ask you defendant Keitel, Field Marshal of the former German Army, do you consider that this order is right when it states, to employ any means in regard to women and children?

A. Measures, yes, insofar as it means women and children from these territories where there was bandit warfare but there were never any killings or any cruelties of women or children.

Q. And the German term, "to do away" really means to kill?

A. No. I do not think it would even have been necessary to tell German soldiers that they must not kill women and children, that was forbidden.

Q. You did not answer my question.

Do you consider that this order is right in regard to measures against women and children or do you consider that it is wrong? Answer yes or no, right or wrong, and later you can give an explanation.

A. I have considered that measure as right and I recognized its existence but the measure which was taken to kill, that was a crime.

Q "Any measures"; don't they include murder?

A But not against women and children.

Q But it said here "Any means against women and children."

A No, it doesn't say "any measures." It says, "Measures to intimidate women and children can be taken."

Q Any measures.

A No German soldier and no German officer has ever thought of killing women and children.

Q And in reality--

A I can't say that in every individual case since I wasn't everywhere and couldn't have been everywhere, and since I haven't had any reports about it.

Q But there were such cases, millions of them?

A I don't know about that. I haven't heard of it and I don't believe it. I don't believe that it happened in millions of cases.

Q You don't believe it?

A No.

Q Now, I shall go on to another question. Now I shall refer to one question, the question of treating Soviet prisoners of war. I do not intend to examine you in regard to branding of Soviet prisoners of war and other facts. They are well known to the Tribunal. I want to examine you in regard to one document, the report of Admiral Canaris, which was presented to you yesterday. You remember that yesterday your counsel presented to you the report of Canaris, which is dated the 15th of September 1941. It is registered under the number PS-338. You remember that even a German officer paid attention to the tremendous arbitrary action and lack of any legality which was employed in regard to the Soviet prisoners of war, and this report of Canaris mentioned mass killings of Soviet prisoners of war. He stated the fact that there was absolute necessity to do away with such arbitrary actions. Did you agree with the statements included by Canaris in his report, which was sent in your name?

A I didn't understand the last, but with reference to me, my personal--

Q My question amounts to this: Were you personally, Keitel, in agreement with the statements which were advanced by Canaris in his report;

were you in agreement with his statements or his wishes to do away with the arbitrary actions which were employed against the Soviet prisoners of war?

A I have answered to my counsel yesterday.

Q You can answer this question very briefly. Were you in agreement with it?

A Yes, I will be brief. I said then that upon receiving that letter, I immediately submitted it to the Fuehrer, Adolf Hitler, particularly because of the attached publication of the People's Commissar's which was dated at the beginning of July, and I requested a renewed decision. I shared the objections that Canaris raised, but I have supplemented my statements.

Q You shared it. Very well. Now, I shall present to you the original copy of the report of Admiral Canaris, on which your resolution is written.

Now, Mr. President, I shall present the document to the defendant, which has his resolution inscribed on it. This resolution was not read into the record in court and I shall also present the text of his final resolution to the Court.

THE PRESIDENT: Do you have the copy?

GENERAL RUDENKO: Yes, I gave it to the defendant.

BY GENERAL RUDENKO:

Q And now--

A I know the document and also the remarks in the margin.

Q Listen to me now. Listen to me and follow the text. In Canaris' document, which you consider to be right, is your resolution of the following facts:

"These suggestions are in accordance with the soldiers conceptions of conducting war, but here we are talking about abolishing or destroying the whole world concept and, therefore, I approve such measures and I cover them."

Keitel, is this your resolution?

A Yes, I have written that. It was the decision after the Fuehrer had been reported to and I did write it.

Q It isn't written there that the Fuehrer said so; it is said "I, Keitel, sanction them."

A And I am stating that here under oath and I said that before I read it.

Q In other words, you admit this resolution. Now, I will give you another document. I shall draw your attention to another part in this document. I wish to call your attention to the second page of this document. Please pay attention to the part right opposite the text of

Canaris' report, where it is stated:

"Getting hold of civilian personnel and also politically undesirable military personnel and the decision in regard to their fate is to be done by operating troops of the Security Police and SD in accordance with the instructions which are not known to the army agencies in carrying out the wish that they are not capable of."

This is written by Canaris, and your resolution is written in the margin, defendant Keitel. It say, "It is quite reasonable." Is that not so?

A Yes.

Q And I repeat that in the margin is written --

A All I heard was "Canaris writes".

Q Nnd now I am mentioned that right opposite that paragraph there is your resolution in the margin, written by you personally, "I am quite in accordance with that." Isn't it? Did you find this resolution?

A Yes. The word "suitable" refers to the fact that the army had nothing to do with these Einsatzkommandos (Action Groups) and that they were strange to them.

Q And, furthermore, that the Security Police and the SD are making their vengeance on the civilian personall and military personnel. Do you consider that it is quite proper?

A No, I considered it right that the activities of these commandos were unknown to the armed forces. I underlined "unknown."

Q I presentthe original to the Tribunal. I am asking you, defendant Keitel, who have been called Fieldmarshal here several times before the Tribunal, you, who called yourself a soldier, whether you, by your own bloody resolution, on September 1941, approved and sanctioned the murder of defenseless unarmed soldiers who were taken by you as prisoners? Is this correct?

A I have found these two decrees and, therefore, I assume the responsibility for the actiom of my office; I assume it.

Q That's clear. In connection with this I ask you another question. Since you mentioned several times before the Tribunal about the soldiers'

H0103 - 0013

duty, I want to ask you: Is it in accordance with the concept of a soldiers' duty and the honor of an officer to publish or promulgate such orders in regard to prisoners of war and the civilian population?

A The answer is "yes", in so far as reprisals are concerned, which occurred during August and September. They were justified when we heard what happened to German prisoners of war in the field of battle. When we heard abou them and found them lying murdered by hundreds.

Q Enough of this, Defendant Keitel. Defendant Keitel, I want you once again to take the same road as you already used here and that is your imagination about so-called reprisal actions as to German war prisoners, but you and I confirmed yesterday that even in May, 1941, before the war, you signed the directives about the shooting of the political and military workers of the Red Army.

A I signed those orders before the war, too, but they don't contain the word "murder."

H0103 - 0014

Q I am not going to argue with you. One cannot argue against documents; they speak for themselves.

I have a few questions more: You testified before the Tribunal that the Generals of the German Army were blindly carrying out Hitler's orders.

A I have stated that I do not know which Generals did object, and I sai that it did not happen in my presence when the question of the words that are subjects of war was raised by Hitler, and of course running orders. More I cannot tell you.

Q Do you happen to know that the Generals on their own initiative would promulgate an order about atrocities, about violations of law and customs of war and that such orders would be approved by Hitler? Do you know such facts?

A The fact is that departments of the Army on a high level with reference to legal procedure, for instance, did alter measures and made them milder or even withdrew them. That fact is known to me, because they all talked to me about it.

Q You did not understand me. I didn't ask about lessening or slackeni the policy, but whether the Generals on their own initiative never promulgated orders about violating laws and customs of war -- on their own initiative. Did you ever promulgate such orders?

A I don't know of that. I don't know.

Q You don't know it? I shall refer only --

A I don't know what order you are referring to. I don't know; but it is possible.

Q I shall refer only to one order. What I have in mind is General Field Marshal von Reichenau's order as to the conduct of troops in the East. This is a document, Mr. President, which was presented by the Soviet Prosecution as USSR-13 in connection with giving this order about the conduct of troops in the East. I shall use only one quotation, "Furnishing foodstuffs to the local population andprisoners of war is an unnecessary humanitarian action."

A I know the order. It has been shown to me during interrogations, before the trial.

Q This order was issued on Reichenau's initiative and it was approved by Hitler as a moder order, was distributed among all the Army commanders.

A I didn't know about that until I heard about it here and I don't think I read that order before either.

Q Of course, such orders evidently were considered by you to have much significance, because after all, the fate of Soviet prisoners of war and of the civilian population couldn't be of any interest to the head of the OKW; their life didn't mean anything.

A You mean me? I had no contact with the commanders at the front and I had no further contact with them either; only the Supreme Commander of the Army had that.

Q And now I am finishing my cross-examination: Here you were testifying before the Tribunal quite often and your accomplices were doing the same thing -- the Defendants Goering and Ribbentrop -- you mentioned several times about the Treaty of Versailles, and I am asking you, were Vienna, Prague, Belgrade, the Crimea before the Versailles Treaty the property of Germany?

A No.

Q You testifies here that in the year, 1944, after an amendment of laws you received an offer to join the Nazi Party. Did you accept the suggestion or offer .-You accepted and you gave your personal data to the leadership of the Party and you paid your entrance free, membership free. Tell us, accepting this offer to join the Nazi Party, should'n it be considered as your agreement with the program of the Party, its objectives and its methodes?

A The request that I should submit my personal details after I had had the golden Party medal for three and a half or four years was considered by me merely a question of administration and there was the request to pay my membership free and I admit both happened.

Q In other words, before this formal offer you already considered yourself a Nazi member, even before the offer was made to you ?

A I have always considered that I was a soldier, not a political soldier and not a politician.

Q Shouldn't one admit, after all that was heard here, that you were a Hitler General, not because of your call of duty but on account of your own convictions?

H0103 - 0016

A. I have stated here that I was a loyal, faithful and obedient soldier under my Fuehrer. And I don't think that there is any General in Soviet Russia who would not obey Marshal Stalin.

GENERAL RUDENKO: I have finished all my questions.

BY SIR DAVID MAXWELL-FYFE:

Q. Defendant, do you remember on the 2nd of October, 1945, writing a letter to Colonel Amen, explaining your position? It was after your interrogations, and in your own time you wrote a letter explaining your point of view. Do you remember that?

A. Yes, yes, I think I have written such a letter. I can't recollect the contents at the moment, but it referred to interrogations, I think.

Q. Yes --

A. And I think it was a question that I should be given additional opportunity to think about matters, since owing to the surprising character of the questions qut to me I often didn't know how I should reply.

Q. I want to remind you of one passage and ask you whether it correctly expresses your view:

"In carrying out the acknowledged thankless and most difficult tasks of these functions, I had to fulfil my duty under the hardest exigencies of war, often acting against the inner voice of my conscience and not infrequently against my own opinion, with a complete self-denial and the most imperious obligation to obey, so that I had to take upon myself to carry out what Hitler my most immediate chief urged or charged me to do."

Remember that passage? Do you remember that passage?

A. Yes.

Q. Well, now, I just want you to tell the Tribunal, what were the worst matters in your view in which you often acted against the inner voice of your conscience? Just tell us some of the worst matters in which you acted against the inner voice of your conscience.

A. I found myself in such a situation quite frequently, but the decisive questions when my inner voice, inner conviction, came into it, and when they were burdened, were those questions which were against my education as a German

H0103 – 0017

officer which I had received over 37 years. That was my basic attitude; that was affected.

Q. I wanted it to come from you, Defendant. Can you tell the Tribunal the three worst things you had to do which were against the inner voice of your conscience? What do you pick out as the three worst things you had to do?

A. Perhaps to start with the [illegible]st, the orders which were given regarding the warfare in the East, as far as they were contrary to the usages of war, and furthermore, those matters which have been mentioned by the British Delegation particularly, the question of the fifty R.A.F. officers. The question, lastly, which implicates me most, that of the terrorist fliers. But foremost of all is the decree of "Nacht und Nebel" -- Night and Fog -- and the effects it had, unknown as they were.

H0103 - 0018

Q Well, now, I think --

A Those are among the worst fights through which I had to go.

Q Well, we will take the Nacht und Nebel.

SIR DAVID MAXWELL-FYFE: My Lord, this document and a good many to which I shall refer are in the British Document Book Number 7, Wilhelm Keitel and Alfred Jodl, and it occurs on Page 279. It is L-90, US Exhibit 503.

Q Defendant, I will give you the German document book. It is 279 of the British document book, and 289 --

A Is it Number 7, Part 1?

Q It is page 289. I do not know which volume it is. Part 2 I think it is.

A Are the pages numbered?

Q Yes, 289.

A Are these figures at the bottom the page numbers? I think these figures at the bottom at the ones.

Q You see, the purpose of the decree is set out a few lines from the start where they say that in all cases where the death penalty is not pronounced and carried out within eight days, "in all other cases, the prisoners are in the future to be transported to Germany secretly, and further dealing with the offenses will take place here. These measures will have a deterrent effect because (a), the prisoners will vanish without leaving a trace; (b) no information may be given as to their whereabouts or their fate."

Both these purposes, you will agree, were extremely cruel and brutal, were they not?

A I said at that time and yesterday that it was my personal view that the secret transports were more cruel than anything else.

Q Would you turn to page 281--291 of yours, 281 of the English book?

A Yes, I have it.

Q You say that this is your covering letter:

"The Fuehrer is of the following opinion:" Line Four.

"If these offenses are punished with imprisonment, even with hard labor for life, this will be looked upon as a sign of weakness. Efficient and energetic intimidation can only be achieved either by capital punishment or by measures by which the relatives of the criminal and the population do not know the fate of the criminal."

You will agree that there again these sentences of the Fuehrer which you are here transmitting were cruel and brutal, were they not?

A Yes.

Q Now, what I --

A May I add something, please?

Q Certainly, as shortly as you can.

A I made a statement yesterday on this subject. I drew your attention particularly to the words that this is a wish of the Fuehrer, which is what I was going to tell the generals who were receiving these orders, namely, what was written between the lines.

Q But, you know, defendant, that that was by no means the end of this series of orders, was it? This order was unsuccessful despite its cruelty and brutality in achieving its purpose, was it not? This order, the Nacht and Nebel order, in that form was unsuccessful in achieving its purpose; it did not stop what it was designed to stop? Is that right?

A Yes, that is right. These matters did not cease.

Q So that in 1944 you had to make a still more severe order. Would you look at document D/762.

SIR DAVID MAXWELL-FYFE: My Lord, that will become GB 298.

Q It says, "The continuously increasing acts of terror and sabotage in the occupied territories which are being committed increasingly by uniformly led gangs compel us to take the most severe counter measures, corresponding to the rigor of the war. Those who attack us from the rear at the decisive stage of our fight for existence deserve no consideration. I therefore order that all acts of violence by non-German civilians on the occupied territories against the German armed forces, the SS and the Police, and against installations which serve their purposes, are to be combatted as follows as acts of terrorism and sabotage:"

Then, (1), the troops, the SS and so on "are to overcome on the spot all terrorists and saboteurs.

"(2) Those who are apprehended are to be handed over to the Security Police and the SD. Accomplices, especially women who do not participate directly in the fighting, are to be put to work, and children are to be spared."

Now, would you look at Paragraph 2:

"The Chief of the OKW will issue the necessary executive instructions. He is entitled to make alterations and additions as far as any need in the war operations make it imperative."

Did you think that that was a cruel and severe order or not?

A Yes, I do think so, but may I make one short statement? I want to rectify something which was probably translated wrongly. It reached me in the wrong sense. It says that women are to be used for work and that children are to be left out. So it says in the version which I have before me.

Q I said "spared". "Spared" meant that they were not to be treated thus. I was careful to mention that.

A Yes.

Q Now, you had the right to make alterations and additions. Did you, by your alterations andadditions, attempt to mitigate that order in any way?

A I have no recollection of having issued any additional mitigating orders, but I must say, too, that I have never issued anything without first of all presenting it to the Fuehrer.

Q Just let us see what you did issue. Would you look at document D/764, which will be GB 299?

Now, that is your executive order, countersigned I think by the Senior Military Judge, putting forward your order based on that decree, and would you look at Paragraphs 4 and 5.

"The current legal proceedings for all acts of terrorism and sabotage and all other crimes by non-German civilians in the occupied territories which imperil the security of war preparedness of the occupying power are to be suspended. Accusations must be taken back. The execution of sentences is no longer to be ordered. The culprits are to be handed over with a report on the proceedings to the nearest local - -

THE PRESIDENT: Sir David, where are you reading?

SIR DAVID MAXWELL-FYFFE: Paragraph 4 of D/764.

THE PRESIDENT: I beg your pardon. Yes, you told us.

SIR DAVID MAXWELL-FYFFE: My Lord, it is just the last four lines of that paragraph.

Q "The culprits are to be handed over with a report on the proceedings to the nearest local authority of the Security Police and SD. In the case of death sentences which already have legal force, the present instructions are to remain valid.

"Crimes which affect German interests but do not imperil the security or the war preparedness of the occupying power do not justify the retention of jurisdiction over non-German civilians in the occupied territories to draw up new regulations in agreement with the Hitler SS and Police chiefs."

And then you ask them to consider among the first one handing over to the SD for forced labor.

That was certainly not mitigation of the order, was it? You were not making it any easier.

A Certain sentences should be added. This is a matter which arose from daily discussion of these matters and which was later on dealt with by me in the sense of the first decree. I made certain explanatory statement, and that I [illegible] signed.

Q Well, now, that is what you called terrorism and sabotage. Let us look at what happen to people who were guilty of something less than terrorism or sa sabotage. Look at document D/763.

SIR DAVID MAXWELL-FYFFE: That will be GB-300.

Q "Non-German civilians --"

A Yes.

Q "Non-German civilians in the occupied territories who endanger the security or the war preparedness of the occupying power by any other means than acts of terrorism and sabotage are to be handed over to the SD. Sections (1) and (2) --" That is the portion that says women will be put to work and children will be spared--" of the Fuehrer's order also applies to them."

Well, you knew perfectly well what would happen to anyone who was handed over to the SD, that he would probably be killed, certainly be put into a concentration camp, did you not?

A It was not clear to me in that sense. The wording always was "for employment", but due to what has become known to me here, it becomes apparent that the concentration camp was frequently the end for them, but it was always represented to me as being a labor camp. That was the description, "labor camps of the Secret State Police."

Q But, this is August 1944. You will agree that that is a most severe course to take with people who have been guilty of something less than terrorism or sabotage, do you not?

A Yes.

Q Now, let us --

A Regarding the cause and the origin, I assume that you do not want me to talk. Otherwise I could give explanations, But I merely want to answer the question. The answer is, Yes, this is most severe.

The statement, if I may make it very briefly, would be that as is known during the daily reports of the situation and the incidents in all occupied territories, during these reports orders were given by the Fuehrer which did find their expression in such a form as this document, and I have stated in detail just how I worked with him. I mean, I never issued anything with my signature which had not previously been agreed on by him and which was not in accordance with his wishes.

Q That was only severe enough for you for three weeks, was it not, because on 4 September, which is barely three weeks later, you issued another order.

SIR DAVID MAXWELL-FYFE: D/766, GB 301.

Q Now, this was issued, as it shows, as an agreement with Hitler, Kaltenbrunner, the Reich Minister of Justice and Dr. Lammers. Now look at (1):

"Non-German civilians in occupied territories who have been legally sentenced by German courts for a criminal act against the security or war preparedness of the occupying power and who are in custody in the occupied territories or in the home area are to be handed over with the facts to the nearest local office of the Security Police and SD. Excepted only are those sentenced to death.

"2. Sentenced persons who, according to the directives of the Fuehrer for the prosecution of criminal acts against the Reich or the occupational power, are not allowed to have any contact with the outer world, are to be especially marked."

Now, had you any idea how many people would be affected by that order?

A No, I can't make a statement about that. I know only that there were increasing difficulties in the occupied territories. We lacked the facilities for keeping the population quiet by means of using troops.

Q Well, let me remind you. You called a conference to consider this matter. That is shown in document D-765, and I also show you D-767, the report of the conference. You need not worry about 765, which just says that there is to be a conference, but in 767, which will be GB-303, there is a report of the conference.

The second paragraph says:

"According to the letter of the Reichsfuehrer SS, Himmler, it is a question of approximately 24,000 non-German civilians who are detained or under arrest, and whose speedy transfer to the SD he demands."

Now listen to this:

"The question that came up during the discussion as to why this transfer to the SD had become necessary at the present time, although not inconsiderable administrative work was involved, remained unanswered."

Can you give any answer now as to why these 24,000 people who had been sentenced should be transferred to the tender mercies of the SD?

A May I read this report? I don't know it; may I read it, please?

Q Certainly. You will see that I didn't trouble you with it all, but it says what I had already put to you earlier, that the Nacht and Nebel decrees had become superfluous as a result of the terror and sabotage decree, and that the Wehrmacht legal department had presented these things for discussion.

Now, can you give us any answer as to why these 24,000 unfortunate persons who had been sentenced should be handed over to the tender mercies of the SD?

A I have to say that I am surprised by the whole incident. I did not attend the conference, and apparently I didn't read the memorandum since I always marked every document which had been presented to me with my initials. I assume that these matters, and particularly the figure which is quoted, were not known to me. This is the first time I have seen it, and I don't remember it

It could be that I issued an order in that connection.

Q I will give you something which you have read.

A As to the facts about which you ask me, to that I have to answer "yes". I don't know the figures, but the facts.

Q And you can't answer my question? You can't give us any reason as to why the Wehrmacht and these other offices were sending these 24,000 people, who had been sentenced by ordinary courts, over to the SD? You can't give us any reason for that?

A No, except that I could say that up to a point I can. I think "SD" is a mistake; it is an error. I think police custody is what we are concerned with.

Q Certainly not.

A Whether it might have been the same thing I don't know.

Q Surely you have been at this trial too long to think that handing people over to the SD means police custody. It means a concentration camp and a gas chamber usually, does it not? That is what it meant in fact, whether you knew it or not.

A I didn't know it, but it is obviously the result. Very probably, the end was a concentration camp. I consider it possible, and, at any rate, I cannot say that it was not.

THE PRESIDENT: Sir David, the last paragraph but one refers to the OKW.

SIR DAVID MAXWELL-FYFE: Yes, My Lord, I am just coming to that.

BY SIR DAVID MAXWELL-FYFE:

Q If you will notice that, defendant, two paragraphs below the one I put to you it states:

"As OKW does not set any great store by passing sentence on the trifles still remaining for the military courts, it has been left for local agreement to deal with them by decree."

It is quite clear that your office was deeply concerned in this business, was it not, defendant?

A Just what that means I don't know, but it obviously had been mentioned during that conference.

Q Now, before I put the next document, I want you to realize how we have been going. We started with the Nacht und Nebel decree, which disappeared, and we went on to the terror and sabotage decree. We then proceeded to acts which were less than terror and sabotage, but were criminal acts under the rules of the occupying powers.

I now want you to consider what was done to people who simply refused to work. Would you look at 769? That is GB-304. That is a telegram from Luftwaffe General Christiansen, who was in the Netherlands, Commander of the Armed Forces in the Netherlands, through his Chief of Staff.

Now listen to this:

"Owing to strike of railway men, all communications in Holland at a standstill. Railway personnel does not obey the appeal to resume work. The call for providing motor vehicles and other means of transport to make the troops mobile and to maintain supplies is no longer answered by the civil population. According to the Fuehrer's decree of the 18th of August, 1944"— that is the terror and sabotage decree, which you have already had— "and the executive instructions of the Chief of the OKW", which we have already seen, "the troops may use armed force only against persons who commit acts of violence as terrorists or saboteurs, whereas persons who endanger the security or war preparedness of the occupying power in any way, by terrorism or acts of sabotage, are to be handed over to the SD."

Then General Christiansen comes in with this:

"This regulation has proved too round-about, and therefore ineffective. In the first place, the necessary police forces are lacking. The troops must again receive authority to shoot, with or even without summary trial, such persons also as are not terrorists or saboteurs in the sense of the Fuehrer's decree, but who endanger the fighting forces by their passive attitude. It is requested that the Fuehrer's decree be altered accordingly, as the troops cannot otherwise assert themselves effectively against the population, which, in its turn, appears to endanger the conduct of the operations."

Now, defendant, will you agree that shooting, with or even without trial, railway men who won't work, is about as brutal and cruel a measure as could well be imagined by the mind of man? Do you agree?

A That is a cruel measure, yes.

Q What was your answer to that cruel measure?

A I can't tell you now, I don't recollect the incident at all, but perhaps an answer is available.

Q Well, look at the document D-770, which is, I think, your answer; it is GB-305. You will notice on the distribution list that that goes to the Commander of the Armed Forces in the Netherlands, and further to the signal which we have just been looking at. Now, you say:

"According to the Fuehrer's order of 30 July, 1944, non-German civilians of the occupied territories who attack us in the rear in the decisive stage of our battle for existence, deserve no consideration. This must be the guiding line for the interpretation and application of the Fuehrer's decree itself and of the Chief of the OKW's executive decree of 18 August 1944. If handing over to the SD is impossible, owing to the military situation and the state of communication, other effective measures are to be taken ruthlessly and independently.

"There are, naturally"--and I ask you to note the word "naturally"--"no objections to passing and executing death sentences by summary court procedure under such circumstances."

I can't remember, defendant, whether you have ever had an independent command youself or not. Have you? Have you had an independent command, apart from your division? I think that was the last independent command you had. You haven't had an independent command yourself, have you?

Don't I make myself clear?

A I didn't understand. What do you mean by "independent"?

Q I mean that you haven't been a commander or chief of an army or army group yourself, if I remember rightly, or of an area, have you?

A No, I was not.

Q I ask you to put yourself in General Christiansen's position. That answer of yours was a direct encouragement, practically amounting to an order, to shoot these railway men out of hand, was it not? "To take other effective measures ruthlessly and independently."

A That is explained by using summary court procedure. It isn't left to the initiative of the individual; there was to be summary court procedure.

Q Just look at the way it is put, defendant. I suggest to you that it is quite clear. One sentence states: "If handing over to the SD is impossible, owing to the military situation and the state of communication, other effective measures are to be taken ruthlessly and independently."

Then, the next sentence: "There are, naturally"-- look at the word "naturally". I suppose that it was "natuerlich" in German. Is that correct?

A I haven't got the word "natuerlich" here. Two words, so far as I can make out, have been inserted.

Q But it says: "There are, naturally, no objections to passing and executing death sentences by summary courts." What you are saying is that, of course, there is no objection to a summary court, but you are telling him, in addition to that, that he is to take effective measures ruthlessly and independently. If General Christiansen had shot these railway men out of hand, after getting that letter from you, neither you nor any other superior could have blamed him for it, could you?

A According to the last sentence, it was his duty to carry out summary court procedure. It says that there are no objections to the executing of this sentence by summary court procedure under such circumstances.

Q But what did you mean by "effective measures to be taken ruthlessly and independently"? What did you mean by that, if it was only an ordinary summary court procedure?

A By that I don't mean apart from summary court procedure, but by means of same. That is what the last sentence means.

Q Well, I put my point to you.

A It is unusual if a summary court is used in such connection.

Q Yes, even on your basis, to use a military summary court to shoot railway men who won't work is going rather far even for you, is it not? It is going rather far, isn't it?

A That was certainly a very severe measure.

Q Do you tell the Tribunal that when you make all these additions-- taking you through the chain of additions that you made to the order replacing the Nacht and Nebel order, of which you disapproved, do you say that you went to Hitler for every one of these executive orders and answers that you made?

A Yes. I didn't issue any of these orders without having submitted them to the Fuehrer first. I must definitely emphasize that that was so.

DR. NELTE: Mr. President, I think a misunderstanding has crept into the translation. It says in the translation "Standgericht", "Summary Court". I don't believe that the words "Summary Court" reflect accurately what we understand in the German language under "Standgericht". I don't know just what you understand in the English or American language under "Summary Court", but I can imagine that this is some summary procedure.

SIR DAVID MAXWELL-FYFE: I was taking it in favor of the defendant that it meant the court he referred to yesterday, one officer and two soldiers. I was taking that. If I am wrong, the defendant will correct me. Is that right, defendant?

THE WITNESS: I briefly talked about this "Standgericht" court martial procedure yesterday, and it was a fact that it wasn't always necessary that a fully trained person needed to be present.

THE PRESIDENT: While you are on the subject of translation, the defendant seemed to suggest that there was no word in the German which is translated by the English word "naturally". Is that true?

SIR DAVID MAXWELL-FYFE: I had it checked, and I am told that the translation is right.

THE PRESIDENT: There is a German word which is translated by "naturally"? I should like to know that from Dr. Nelte.

DR. NELTE: I am told that possibly an error of judgment could be caused in this connection by assuming that in American and British law a summary court is not at all entitled to pass death sentences.
I am told that a summary court--

THE PRESIDENT: Excuse me, Dr. Nelte; I didn't ask that question. The question I asked you was whether there was any German word which is translated into English by the word "naturally". Is that not a clear question? Perhaps you haven't got the German text.

DR. NELTE: In the German text it says "under such circumstances, of cours It is, in my opinion, not correct that the translation into English uses the word "Naturally". That is put at the beginning so that you could come to the conclusion that there are naturally no objections, whereas in the German it says "against passingof and executing death sentences by summary court procedure there are, under such circumstances, of course no objections."

THE PRESIDENT: Then the answer to my question is "yes" There is a word in the German which is translated "naturally"

DR. NELTE: Yes, but the words "naturally" and "under such circumstances" are separated in the English version, whereas in the German version they belong together. "Naturally" refers to "under such circumstances".

Q Now I want to come to another point. You told us yesterday that with regard to forced labor you were concerned in it because there was a shortage of manpower and you had to take men out of industry for the Wehrmacht. Your office was concerned with using military forces in order to try to round up people for forced labor, was it not?

A I don't think that is quite the correct conception.

Q If you are going to deny it, I put the document to you. I put General Warlimont's views to you and see if you agree. I think it saves time in the end. If you look at document 3819-PS, which will be GB 306 -- page 9 of the English version -- it is the report of a meeting at Berlin on the 12th of July, 1944. You have to look on through the document after the letters from the Defendant Sauckel and the Defendant Speer -- the account of a meeting in Berlin. I think it is page 10 of the German version. It starts with a speech by Dr. Lammers and goes on with a speech by the Defendant Sauckel, then a speech from the witness Von Steengracht, then a speech from General Warlimont:

"The Deputy of the head of the OKW, General Warlimont, referred to a recently issued Fuehrer order." Have you found the portion? I will read it if you hav

A Yes, I have found the paragraph "The Deputy of the Chief of the OKW"

Q "The Deputy of the Head of the OKW, General Warlimont, referred to a recently issued Fuehrer order, according to which all German forces had to place themselves in the service of the work of acquiring manpower. Wherever the Wehrmacht was and was not employed exclusively in pressing military duties, as for

H0103 - 0030

example, in the construction of the coastal defenses, it would be avaihble, but it could not actually be assinged for the purposes of the GBA. General Warlimont made the following practical suggestions:

"a) The troops employed in fighting partisans are to take over in addition the task of acquiring manpower in the partisan areas. Everyone who cannot fully prove the purpose of his stay in these areas is to be seized forcibly.

"b). When large cities, due to the difficulty of providing food, are wholly or partly evacuated, the population suitable for labor commitment is to be put to work with the assistance of the Wehrmacht.

"c) The seizing of labor recruits among the refugees from the areas near the front should be handled especially intensively with the assistance of the Wehrmacht."

After reading this report of General Warlimont's words, do you still say that the Wehrmacht --

A I am not aware that the armed forces have ever received an order referring to the rounding up of workers. I haven't found any indication of such a case. The conference as such is unknown to me and so are the proposals you mentioned. It is now as far as I am concerned.

Q It is quite clear that General Warlimont is suggesting that the Wehrmacht should help in the rounding up of forced labor, isn't it?

A But as far as I know it has never happened. I don't know that any such order was given. According to the record, this is a proposal made by General Warlimont, yes.

THE PRESIDENT: Sir David, perhaps in these circumstances you should read the three lines after the passage you have read.

Q My Lord, I should. The next line: "Gauleiter Sauckel accepted these suggestions with thanks and expressed the expectation that certain successes could therewith already be achieved."

A May I say something about that? May I ask that when the time comes Gauleiter Sauckel should be asked whether and to what extent troops of the armed forces did actually participate in such matters. It is also not known to me, anyway.

Q No doubt the Defendant Sauckel will be asked a number of questions in due time. At the moment I am asking you. You say that you don't know anything about it?

A No, I don't recollect that an order has been given in this connection. That measures have been taken I can gather from the statement from Warlimont.

Q Now I want to ask you a few questions about the murder of various prisoners of war. I want to get it quite clear. Did you mean yesterday to justify the order for the shooting of commandos, dated the 18th of October, 1942? Did you wish to say that it was right and justified, or not?

A I stated yesterday that neither General Jodl nor I thought that we were in a position or considered it suitable that a written order should be drafted or submitted. We didn't do it because we couldn't explain offhand reasons for it,

Q The next question that I put to you is this: Did you approve and think right the order that was made that commandos should be shot?

A I no longer resisted, firstly because of the fear of punishment, and secondly because I could no longer alter that order without personal orders from Hitler.

Q Did you think that that order was right?

A According to my inner convictions I did not consider it right, but after it had been given I did not contradict or resist or work against it in any way.

Q You know that your own orders had contained provisions for the use of parachutists being dropped for sabotage purposes, don't you? Your own orders have contained that provision of parachutists being dropped for sabotage purposes. Don't you remember in the Fall Gruen against Czechoslovakia I would put it to you if you like, but I would so much prefer that you try to remember it yourself. Don't you remember that your own orders contained a provision for parachutists being dropped for sabotage purposes in Czechoslovakia?

A No.

Q You don't?

A No, I do not remember that.

SIR DAVID MAXWELL FYFE: My Lord, it is page 21 and 22 of the document book.

THE WITNESS: May I ask which document book?

SIR DAVID MAXWELL FYFE: Yes. It ought to be your first document book, and quite early on. It is part of the Fall Gruen, which is document 388-PS, and it isitem 11. I think it is somewhere about page 15 or 16. You remember the Schmundt minutes are divided into items.

H0103 - 0033

SIR DAVIDMAXWELL FYFE: The Tribunal will find it at the foot of page 21, "For the success of this operation, cooperation with the Sudeten German fronteir population, with deserters from the Czechoslovakian Army, with parachutists or airborne troops, and with units of the sabotage service will be of importance."

THE WITNESS: May I read the paragraph in question, what I think you mean?

BY SIR DAVID MAXWELL FYFE:

Q Yes; it isheaded "Missions for the Branches of the Armed Forces ..."

A For the armed forces staff, for the armed forces, part A, yes, I got it.

Q Yes, that is right. It says "...cooperation with the frontier population in theSudetan German territory" and in it, "the deserters from the Czechoslovakian Army .."

A "....parachutists or airborne troops ..."

Q "... and with units of the sabotage service will be of importance."

A "...can be of importance." Is that the one? These parachutists and airborne troops were in fact meant to be used against Russia for the operations that I mentioned yesterday since, in accordance with the conception of the armed forces, it would be too difficult to use the artillery. These are not saboteurs, these are actual members of the German Air Force, and then at the end the sabotage service is mentioned.

Q The sabotage service must be people who are going to be of some use, aren't they? The sabotage service must be going to do sabotage, must they not?

A Indubitably, but not by using airborne troops and parachutists, rather by using saboteurs in the frontier zones. That had been thought of. We did in fact have such people in the Sudetenland.

Q I am not going to argue with you but I want to have it clear. I now want to come to the way in which this order from the Fuehrer was announced. You will find the order -- the Tribunal will find it on page 64 -- but what I want him to look at if he would be so kind, is page 56 of the book, page 25 of the defendant, of your book. The second sentence of the defendant

Jodl "Top Secret copy to Commandos" about this order. That is on page 25, and defendant Jodl says, "This order is intended for commandos only and must not under any circumstances fall into enemy hands." Was that the case, that because you and the Defendant Jodl were ashamed of the order, that you had this secrecy provision put on it?

A I haven't found it yet, I am afraid. I would like to find the provision. I have got the page 25 and that teleprint letter.

Q From the Oberkommando Wehrmacht, dated 19 October. Now have you got it., the second sentence.

A Is the date October 18, 1942?

Q 19 October, issuing the order ofthe 18th. "This order is intended for commandos and must not under any circumstances fall into enemy hands." Was that because you were ashamed of the order, that it was put like that?

A I haven't seen the letter and I could consider it proper that General Jodl should be asked. I don't know the decree but our reaction on the order has already been explained by me. I can't give you the reason.

Q You can't give me the reason forthis secrecy?

A I don't know the motives which werebehind it and may I ask you, please, to put this question to General Jodl. I haven't seen the whole letter, but regarding my views and those held by General Jodl, I have already stated what they were.

Q Well, now, I want you to look at the way that even Hitler expresses it with regard to this. If you look -- I guess it is page 31, our book, it is a report from Hitler wherein he says "The report on this subject appearing in the armed forces communique will briefly and laconically state, that sabotage, terror, or destruction units had been encountered and exterminated to the last man." You were doing your best -- and when I say "you", I mean you collectively, Hitler, yourself, and Jodl and everyone else concerned -- you were doing your best to keep quiet about this, about anything being known about this order, weren't you?

A That was not my impression. We always mentioned the fact in the daily bulletin of the armed forces. We always referred to that thing, as to my recollection; namely, that in the daily bulletin we did say that and that incident had occurred and this and that are the consequences; that is my recollection.

Q I am now only going to ask you to look atone document further on, because in that regard, you remember after the Soviet Union tried certain people at Karkov, when you were trying to get up counter propaganda -- now, look at this document, about these executions; it is page 308, document UK-57. You have a copy of it. I am only going to ask you about two incidents. You see it is a memorandum and the passage that I want you to look at is number 2, the fourth memorandum, paragraph 2, which is headed "Attempted attacks on the Battleship Tirpitz." Do you see that?

A Just one moment, I haven't found it yet, the matter of the Tirpitz, I mean.

Q Have you got it? Just, now, listen: "At the end of October 1941, a British commando that had come to Norway in a cutter, had orders to carry out an attack on the Battleship Tirpitz in Drontheim Fjord, by means of a two-man torpedo. The action failed since both torpedoes, which were attached to the cutter were lost in the stormy sea. From among the crew, consisting of eight men who were English and four Norwegians, a party of three Englishmen and two Norwegians were challenged on the Swedish Border; however, only the British seaman, Robert Paul Evans, born 14 January 1922, in London, could be arrested and the others escaped into Sweden. Evans had a pistol pouch in his possession, such as are used to carry weapons under the armpit and also knuckle duster." And in the next line: ".........representing a breach of international law could not be proved." Did incidents such as that, under this order, come to your attention?

A The actual incident I don't remember, but it is clear that it has been reported by the department.

Q Well, now, you have told us that you have been a soldier for 41 years, that emphasized your military position. What, in the name of all military tradition, has that boy done wrong by the towing of a two-man torpedo to make an attack on a battleship; what had he done wrong?

A No, this is an attack against a weapon of war; if it was done by soldiers as members of armed forces, then this is an attack against a military targed by the use of sabotage.

Q If you were prepared to tow a two-man torpedo for an attack against a battleship, what is wrong with a sailor doing that? I want to understand what is in your mind. What do you as a man who has been a soldier for forty years, what do you see wrong for a man doing that, towing out a torpedo against a battleship? Tell us. I can't understand what is wrong.

A This is no more wrong than an attack with a bomb would have been, an aerial bomb. I recognize that, I recognize that it is a perfectly legal attack.

Q Well now, if you did not see that incident I will not go through putting the others in as they are all just the same, men in uniform coming up to the Girond to attack German ships.

What I want to understand is this. You were a Field Marshal, standing in the boots of Bucher, Gneisenau and Moltke. How did you tolerate all these young men being murdered one after the other without making any protests?

A The reason why I did not resist and did not object has been stated by me and confessed in detail and I cannot today alter the facts. I know that these matters have happened, these incidents, and I know the consequences.

Q But, Field Marshal, I want you to understand this. As far as I know in the German military code, as in every military code, there is no obligation on the part of a soldier to obey an order which he knows is wrong, which he knows is contrary to the laws of war and law. It is the same in your army and our army and I think in every army, isn't that so?

A The carrying out of the orders of 18 October, 1942 was not done by me personally. I was neither at the Girond nor present at the attack of the Battleship Tripitz. I have merely known that the order was issued, together with all the threats of sentences which prohibited commanders from departing from the existing instructions.

You, Sir David, have asked me youself whether I consider appropriate and I have given you a clear cut answer, that it was impossible for me to prevent the action in the case of the Girond and the Tirpitz if I wanted to.

Q You see my difficulty. I have only given you two, there are plenty more. There are others which occurred in Italy which we have heard. The point I am putting to you is this. You were the representative, that you have told us a hundred times, of the military tradition. You had behind you an officers corps with all its --

A No, no Mr. David, I have to deny that. I was neither responsible for the navy nor for the army nor for the air force. I was not a commander, I was a Chief of Staff and I had no influence upon the carrying out of orders in the various sub-sections of the armed forces. I had no right to interfere.

Q We have heard about your staff rank but I want to make this point perfectly clear.. You were a Field Marshal, Kesselring was a Field Marshal, Milch was a Field Marshal, all I gather with military training behind them and all having their influence if not their command, amongst the armed forces of Germany. How was it that there was not one man of your rank, of your military tradition with the courage to stand up and oppose cold-blooded murder? That is what I want to know.

A I did not do it, I did not object to these things afterwards and I cannot say any more about that. As far as the others are concerned, I cannot talk for them.

Q Now, let us pass if you can say no more to that.

I want to see what you did with regard to our French allies because I have been asked to deal with some matters for the French delegation.

You remember that on the Eastern Front you captured some Frenchmen who were flying with the Russians. Do you remember making an order about that? You captured some De Gaullists, as you called them, that is Free French people who were fighting for the Russians. Do you remember your action with regard to that?

A The transmission of a Fuehrer order I recollect regarding the handing over of these Frenchmen to their government, the one that had been recognized by us.

Q That is not, of course, the part of the order which I want to put to you.

"Detailed investigations are to be made in appropriate cases against relatives of Frenchmen who fight for the Russians. If these relatives are residents in the occupied area of France, if the investigation reveals that relatives have given assistance to facilitate escape from France, then severe measures are to be taken. OKW/WR is making the necessary preparations with the military commander on the spot and with the SS and police chief. (Signed) Keitel."

Can you imagine anything more dreadful than taking severe measures against the mother of a young man who has helped him to go and fight with the allies of his country? Can you imagine anything more despicable?

A I can think of many things since I have lost sons of my own in this war.

I have not invented this order, I am not the originator, I merely passed it on.

Q You appreciate the difference, defendant, between the point which you make and the point which I make. Losing sons in a war is a terrible tragedy. Taking severe measures against a mother of a boy who wants to go and fight for his country's allies, I am suggesting to you is despicable. The one is a tragedy, the other is the height of brutality. Do you not agree?

A To that I can only say that it is not stated as to what effects the investigations should have. I do not know.

Q Well, if that is all the answer you can make I will ask you to look at something else.

A No, I should like to add that I regret that any members of families suffered for the misdeeds of their sons.

Q Well, I will not waste the time by taking up the word "misdeed." If you think that is a misdeed it is not worth our discussing it further. I just want to protest against your word.

Now, let us see, that was not an isolated case. Just look at page 110 (a) of the document book which you have (page 122). This is an order quite early on, the 1st of October, 1941.

"Attacks on members of the armed forces lately committed in the occupied territories give reason to point out that it is advisable that military commanders always have at their disposal a number of hostages of different political tendencies, namely (1) nationalists, (2) Democratic-bourgeois, and (3) communists. It is important that among them shall be well-known, leading personalities or members of their families whose names are to be made public. Depending on the membership of the culprit hostages of the corresponding group are to be shot in case of attacks. It is asked that commanders be accordingly instructed. (Signed) Keitel."

Why were you so particular that if you happened to arrest a democratic-bourgeois that your commanders should have a sufficient bag of democratic-bourgeois to shoot as hostages? I thought you were not a politician.

A I was not in the least bit anxious and the thought does not originate from me but it is in accordance with the instructions regarding hostages which I had mentioned the day before yesterday or yesterday and which states that those who were held as hostages must come from those circles who originated the attacks. That is my recollection and is an explanatory statement or a confirmation.

Q Did you agree with that as a course of action, that if you found a member of a democratic-bourgeois family who had been taking part in say sabotage or resistance, thatyou should shoot a number of democratic-bourgeois on his behalf? Did you approve of that?

A I have already said how these measures regarding shooting of hostages were ordered, how they were to be handled, and how the shooting of those people was to take place.

Q I am asking you, defendant, did you or did you not approve of a number of democratic-bourgeois to be taken as hostages for one democratic-bourgeois who happened to be --

A It doesnot say so in the document, it does not say so. What it saysis that the names of the hostages should be taken, and not as to their shooting.

Q Would you mind looking at it since you correct me so emphatically-- depending upln the membership of the culprits, that is, whether he is a nationalist, or a democratic-bourgeois or communist, "hostages of the corresponding group are to be shot in case of attacks."

A If that is contained in the document then it will have been carried out in such form or another. Just how it was handled in practice that becomes clear from the document referring to the discussion between the commanders.

Q I now ask you, did you approve of that?

A I personally had a different view regarding the shooting of hostages, but I signed it, because I had been told and ordered to do so.

Q You said you had a different view. Will you just look at a letter from Herr Terboven, who was in charge in Norway, Document PS-870, and it is page 85, 71 (a), GB 307. This is a report from Terboven for the information of the Fuehrer and I want you to look at paragraph 2 "Counter Measures", sub-paragraph 4. Do you see it? Have you got it, defendant? I am sorry, I did give you the number, probably you did not hear it, 71 (a), page 71 (a) of the document book. So sorry I did not make it clear.

SIR DAVID MAXWELL FYFE: My Lord, I am told that this has been put in by the French Prosecution as Exhibit RF-281. I gave it a GB number, as I recall.

THE PRESIDENT: What number is it?

SIR DAVID MAXWELL FYFE: RF-281.

BY SIR DAVID MAXWELL FYFE:

Q Do you find section 2, paragraph 4. That is:

"Just now I received a cable of Fieldmarshal Keitel, in which the issue of a decree is demanded, according to which members of the personnel, and, if the occasion arises, their next of kin are directly responsible for cases of sabotage occurring in their department. This demand makes sense and promises success only if I am actually allowed to perform execution by firing squads. If this isnot possible, such a decree would cause exactly the opposite reaction."

Opposite the word "If I am actually allowed to perform executions by firing squads" there is the pencil note from you, "Yes, that is best." So that is a third example where I suggest you, yourself, are approving and encouraging the shooting of next of kin for the act of some member of their family. What do you say to that, your own pencil note?

A I did write it, and a corresponding order, which was given, was worded very differently. A reply was made which was worded differently, but I have written that remark there.

Q That's what I wanted to know. Why did you write this remark, "Yes, that is best", approving of a firing squad for relatives of people who had committed some occupation offense in Norway? Why did you think it was best that there should be a firing squad for the relations? Why?

A It wasn't done and it wasn't ordered. What wasordered was something different.

Q That's not what I'm asking, and I shall give you one more chance of answering it. Why did you put with your pencil on that document, "Yes, that is best"?

A I can't explain it to you today, considering that I've seen hundredsof documents daily. I've written it and I'm admitting it now.

Q Of course, unless it means something entirely different from what you've written, it meant that you approved it yourself and thought the best course was that the relations should be shot by the firing squad.

SIR DAVID MAXWELL FYFE: I think My Lordship said that you wished to adjourn.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL FYFE: I am not finished, my Lord. I have a few matters for Monday morning.

THE PRESIDENT: Well, the defendant can return to the dock, and we will proceed with the other applications.

Sir, David, shall we deal with these applications in the same way we have done before?

SIR DAVID MAXWELL FYFE: Yes, My Lordship. The first one that I have is an application on behalf of the defendant Kaltenbrunner for a witness called Hoess, who is the former Commander of the Auschwitz Concentration Camp. My Lord, there is no objection on the part of the Prosecution to that.

THE PRESIDENT: So that is the application which has to be made by a great number of the defendants' counsel.

SIR DAVID MAXWELL FYFE: Oh, yes, My Lordship is quite right.

My Lord, as Commandant of the Auschwitz Concentration Camp, the Prosecution feels that he could contribute to the information of the Tribunal, if no objection is to be coming.

THE PRESIDENT: Dr. Stahmer, I see that you are among the counsel who applied for him. Is there anything you wish to add about that?

DR. STAHMER: I have nothing to add to my written application.

THE PRESIDENT: Thank you. Then the Tribunal will consider them, you see, after you have dealt with them.

SIR DAVID MAXWELL FYFE: My Lord, the next one is Dr. Navile. Dr. Navile was allowed as witness to the defendant Goering, provided he can be located. He has been located in Switzerland and I understand he has informed the Tribunal that he sees no use of his coming here as a witness for Goering, and he is now asked for by Dr. Nelte, counsel for Keitel, to prove that prisoners of war had been treated according to the rules of the Geneva

H0103 – 0044

Convention, Dr. Navile having been a representative of the Red Cross. Dr. Nelte, I am told, will be satisfied with an interrogatory, and the Prosecution have no objection to an interrogatory.

THE PRESIDENT: Dr. Nelte.

DR. NELTE: That is correct, yes. If I may have permission, then I would be agreeable to permit the questions to Dr. Navile which I have to put to him in writing. But may I add something here, not to this application, but withreference to another application, which I have already, I think yesterday or the day before, submitted to the Prosecution through the translating department. My application regarding Hitler's stenographers and their admissibility as witnesses had been refused by the Tribunal, saying that they are irrelevant. I have now received a letter, together with an affidavit from one of these stenographers, and in that affidavit I find a passage which refers to Keitel's conduct towards Hitler during his reports and during their conferences. It has been said in public, and it has been said in this courtroom, that the defendants are always quoting dead people whenever they want to state anything in their favor. Keitel would like to ask that the part of the affidavit, which I shall submit to the Tribunal, having already submitted it to the Prosecution, should be admitted so that the witness can be forfeited, but that, nevertheless, I would have the possibility to submit that passage of the affidavit, provided that the Prosecution would agree.

SIR DAVID MAXWELL FYFE: If Dr. Nelte, My Lord, will submit the passage, we will consider it, but I have hot had the chance of doing it up until now.

THE PRESIDENT: Well, you will carry out that course, if you want no objection to it.

SIR DAVID MAXWELL FYFE: Verywell, you will let me have it, a copy of it?

DR. NELTE: Yes.

SIR DAVID MAXWELL FYFE: My Lord, the next application is on behalf of the defendant von Schirach, a request to submit an affidavit of Dr. Hans Carossa. The gist of the affidavit is that the defendant tried to keep himself independent of Party directives in matters of literature and art and that, while Gauléiter in Vienna, he repeatedly intervened on behalf of Jews and concentration camp inmates. My Lord, the Prosecution has no objection to an affidavit being filed.

SIR DAVID MAXWELL-FYFFE: The next is an application on behalf of the Defendant Funk for interrogation to be submitted to Mr Messersmith.

THE PRESIDENT: Just wait a minute.

SIR DAVID MAXWELL-FYFFE: I am sorry.

THE PRESIDENT: Yes, sir David?

SIR DAVID MAXWELL-FYFFE:My Lord, the next is an application on behalf of the Defendant Funk, asking for interrogatiories to be submitted to Mr Messersmith dealing with Funk's relation to the Party and his work in the Reich Ministry of Propaganda. My Lord, the Prosecution have no objection, but remind the Tribunal that the defendant Funk has already, on the 15th of March, asked permission to submit another affidavit to Mr Messersmith, dealing with Mr Messersmith's affidavit. The Prosecution did not raise any objection, but the Tribunal has not, as far as we know granted that yet. So I wanted the Tribunal to know there was a previous request --

THE PRESIDENT: Do you mean an affidavit or interrogatory on the 15th of March?

SIR DAVID MAXWELL-FYFFE: Interrogatories.

THE PRESIDENT: Interrogatories? surely we must have dealt with it.

SIR DAVID MAXWELL-FYFFE: Well, that is the information that my office had They haven't seen the --

THE PRESIDENT: I see.

SIR DAVID MAXWELL-FYFFE: In case the Tribunal hadn't dealt with it, we want to know that there is one outstanding. We have no objection to either.

Then the Defendant Rosenberg requests Hitler's decree to Rosenbers of June 1943. There is no objection on the part of the Prosecution. I am told that we can't trace any previous application but the position at the moment is that we haven't any objection to it.

Then, my Lord, the next is von Neurath, an application for a questionnaire, for Proffessor Kossuth, a resident of Prague. Really they ask for interrogatories My, Lord, there is no objection to interrogatories.

Then, my Lord, there is an application in reverse -- if I may so put it-- from Dr. Dix on behalf of the Defendant Schacht, the downgrading of Herr Huelse, who was drafted as a witness, to an affidavit. My Lord, we have no objection to that.

DR. DIX, (Counsel for the defendant Schacht): This is the witness Hucles. He had been granted to me as a witness. So as to simplify and abbreviate, I have decided to forfeit the right to hear the witness and use an affidavit. I have received the affidavit. Whilst this application of mine was pending, however, the witness arrived in Nurnberg and he is here now, and I think therefore it would be best if he stayed and I had permission to examine him in such a way that I present his own affidavit to him and then ask him whether he will identify it. And if I could have your permission, I would like to ask him one of tow additional questions. I think that would be much more practical than to have the witness come here and then send him away again and have nothing but an affidavit. What I wanted to say was to point out the difficulty of getting him here --

SIR DAVID MAXWELL FYFE: The withdraw the application to have the affidavit --

THE PRESIDENT: Is the witness Huelse a prisoner or not, or an internee?

DR. DIX: No, he is a free witness. He is a free witness. He is not in detention. And he is going about Nurnberg freely.

THE PRESIDENT: Can he remain here until the Defendant Schacht's case comes on?

DR. DIX: I have talked to him and he has told me that he can stay, yes.

SIR DAVID MAXWELL-FYFE: My Lord, we have no objection. The Tribunal has already granted him as a witness. If Dr. Dix wishes him as a witness, of course we have no objection to it.

The next one is an application on behalf of the Defendant Streicher, for an affidavit from a Dr. Herold. To put it quite shortly, the Prosecution suggests that it should be interrogatories rather than an affidavit, and on that basis we would make no objection.

My Lord, there is only one thing I have to say. We had a most useful discussion with Dr. Dix last night, following out the Tribunal's suggestion of going through the documents. Dr. Dix was most helpful in explaining the purpose of his documents and what they were. I do suggest that if any of the Defense Counsel when they are explaining the documents would also care to explain the purport of their witnesses -- I don't want to embarrass them in any way -- but if they would voluntarily explain the purport of witnesses, either to Mr. Dodd or myself, we might be able to save them a great deal of time, by indicating whether the evidence of that witness would be agreed to or might be the subject of objection.

I only throw it out now, as we are going to meet over the documents, and if they would extend it to witnesses, I am sure we could have most profitable cooperation.

THE PRESIDENT: You are suggesting, Sir David, are you, that they should explain to you the nature of the evidence which the witness was going to give?

SIR DAVID MAXWELL-FYFE: Yes.

THE PRESIDENT: And if the Prosecution were not going to dispute it, that it might be incorporated in an affidavit?

SIR DAVID MAXWELL-FYFE: Yes, that we could probably dispense with the witness, and probably incorporate that in an affidavit. Of course, I have been told the general purport of the witness, because I attended on the application, but if they could elaborate on it a little more and let me know what the scope of the witness's testimony would be, I could concede, either in whole or in part, and save them a lot of work and the Tribunal a lot of time.

THE PRESIDENT: Well, I think the Tribunal would like to know whether the Defendants' Counsel think that is a possible course, whether it might lead to some shortening of the Defense. Could Dr. Dix possibly tell us whether he thinks it would be possible?

DR. DIX: Of course, I can't make the statement on the reaction of my colleagues, since I cannot read their minds. All I can state at the moment is that the type of conversation which I had the honor of having with Sir David yesterday appears to be extremely practical and very advantageous. Personally, I am inclined to think that my colleagues too would probably agree to that, unless there are some difficulties that might arise.

THE PRESIDENT: Do you understand what Sir David was suggesting, that such a conversation should apply not only to documents but also to witnesses and that if you could indicate more fully than you do in your applications what the subject of the testimony was going to be, possibly the Prosecution might be able to say in those circumstances that upon those matters we should* not propose to dispute the evidence and therefore it might be incorporated in an affidavit?

SIR DAVID MAXWELL-FYFE: My Lord, if your Lordship allows me to interject, if they care to bring a statement on a particular witness's testimony, the Prosecution would, I am sure, in many particulars be prepared to say, "Well, you produce that statement on that point and we will admit it, without any formality."

THE PRESIDENT: Perhaps, Dr. Dix, you and the other Counsel for the Defendants could consider that matter.

DR. DIX: Yes. I understood it exactly as you, My Lord, have just stated it, and of course I had talked about both witnesses and documents with Sir David. And in that sense we came to an agreement.

THE PRESIDENT: If that is all we need do at the moment, then --

SIR DAVID MAXWELL-FYFE: If your Lordship pleases, yes.

THE PRESIDENT: -- then the Tribunal will adjourn.

(The Tribunal adjourned until 8 April 1946 at 1000 hours.)